

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

EVANSTON INSURANCE COMPANY,
10 Parkway North
Deerfield, IL 60015,

Plaintiff,

v.

ATLANTIC CONCRETE CUTTING, INC.,
396 North Pemberton Road
Mount Holly, NJ 08060,

and,

AGATE CONSTRUCTION COMPANY,
1030 Route 83
Clermont, NJ 08210

Defendants.

Civil Action No. 2:21-CV-781

**STIPULATION OF DISMISSAL
WITHOUT PREJUDICE**

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

WHEREAS, this is an action seeking a declaratory judgment that Plaintiff Evanston Insurance Company does not owe insurance coverage to Defendants Atlantic Concrete Cutting, Inc. and Agate Construction Company in connection with a matter filed in Philadelphia County, Pennsylvania (the “Underlying Matter”), the Underlying Matter styled as Kimberly Bolden-Johnson, individually and as the administratrix of The Estate of John Calvin Johnson, deceased, v. Agate Construction Company, Inc.; Johnson Enterprises; Philaport; Philadelphia Regional Port Authority v. Atlantic Concrete Cutting, Inc., with related cases having been consolidated under that caption and under the Case ID January Term 2018, No. 1066.

AND WHEREAS, Defendant Agate Construction Company settled the Underlying Matter as to Plaintiff's claims on January 9, 2020.

AND WHEREAS, Defendant Agate Construction Company sought and received a non-jury trial in Philadelphia County on the sole remaining claim in the Underlying Claim, which was the issue of whether Defendant Atlantic Concrete Cutting, Inc. owed Defendant Agate Construction Company indemnification based on contract;

AND WHEREAS, on May 25, 2021, Judge Abbe Fletman of the Philadelphia County Court of Common Pleas issued a directed verdict in favor of Defendant Atlantic Concrete Cutting, Inc. and against Defendant Agate Construction, and later amended their findings and conclusions to reflect entry of a nonsuit instead of a directed verdict;

AND WHEREAS, on October 15, 2021, the Underlying Matter was appealed by Defendant Agate Construction to the Superior Court of Pennsylvania;

AND WHEREAS, on June 10, 2021, with all parties having agreed that the issues raised in the Underlying Matter were relevant to this Declaratory Judgment Action, this Court placed this matter in civil suspense;

AND WHEREAS, on September 30, 2022, the Superior Court of Pennsylvania upheld the trial court's decision to enter nonsuit against Agate Construction Company.

AND WHEREAS, on April 5, 2023, the petition for allowance of appeal to the Pennsylvania Supreme Court filed by Agate Construction Company was denied;

THEREFORE, the parties to this Declaratory Judgment Action stipulate to dismiss this Declaratory Judgment Action without prejudice.

BY: /s/ Erin E. Lamb
Paul Piantino, Esq.
Erin E. Lamb, Esq.

Date: 7/16/2024

Attorneys for Plaintiff
Evanston Insurance Company

BY: /s/ Dennis Chow
Dennis Chow, Esquire
Attorneys for Defendant,
Atlantic Concrete Cutting

Date: 7/16/2024

BY: Louis A. Bove
Louis A. Bove, Esq.
Attorney for Defendant,
Agate Construction Company

Date: 7/16/2024